34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 173.

KANSAS—AUTHORIZES CONSTITUTION AND STATE GOVERNMENT.

[To accompany bill S. 356.]

JANUARY 31, 1857.

Mr. GROW, from the Committee on Territories, made the following

REPORT.

The Committee on Territories, to whom were referred Senate bill 356, *entitled "An act to authorize the people of the Territory of Kansas to form a constitution and State government," preparatory to their admission into the Union on an equal footing with the original States, and also House bill* 411, *for the admission of Kansas as a State, with the amendment of the Senate thereto, having duly considered the same, beg leave to report:*

In the act of Congress organizing the Territory of Kansas, the actual residents who might seek a home within its limits were assured that they were to be perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States. A prohibition on the existence of slavery that had remained in force for more than a third of a century was stricken off, and a vast empire was thrown open as a prize to be struggled for by free and slave labor.

The first legislature to be elected would, in a great measure, if not wholly, determine the supremacy of slave or free institutions in the expected State. What should be its character was then a question of absorbing interest, not only to those who expected to make Kansas their future home, but as well to the people of the whole country. To the settler seeking this Territory it was a question of vital interest whether he would be permitted to rear his children from the enervating influences of the institutions of human bondage; to free labor, whether it would be allowed a choice of home on the public domain, free from the degradation which contact with slavery everywhere brings upon labor and the laborer. To the people of every section, whether the policy of slavery restriction, inaugurated by the fathers of the republic, and continued uninterruptedly for more than sixty years, sanctioned by every department of the government, legislative, executive, and judicial, was to be overturned, and a new doctrine, subversive of the guarantees of freedom and the rights and interests of free labor to be established in its stead.

Those who regarded the expansion of slavery as an element of po-

litical power hailed the repeal of the Missouri compromise as a most fortunate measure in furtherance of their cherished designs. The kind of institutions which should be fastened upon Kansas would affect the character of the federal government by the controling influence which it would have in determining the balance of power between the conflicting elements of free and slave labor. Hence, the same influence that secured the repeal of this restriction, planned and sought to execute the subjugation of Kansas to slavery. This plan, matured and stimulated by secret societies organized in the western counties of Missouri, even before the Territory was opened for settlement, developed itself at the election held therein for members of the legislature, by the appearance at the polls of almost five thousand men, who came in organized bands, and were so distributed through the Territory as to control every council district and every representative district but one. The invaders appointed, in most cases, their own officers of election, so as to control the supervision of the polls, and then, by force or intimidation, prevented actual residents from voting. Of the 6,301 votes polled at the election for members of the legislature, but 1,410 were legal voters.

A legislature elected thus by fraud and violence, sought to secure a self-perpetuation of its power by enacting laws ingeniously devised, in utter disregard of the political and constitutional rights of the people, operating upon future elections, upon the administration of justice, the organization of the courts, on the selection of all officers, and every source of influence and power so as to hedge in the usurpation in such a manner as to close every avenue of redress, and preclude all possibility of overthrow. The more effectually to guard against any loss or transfer of power, they denied to the people the selection of *all officers, civil, military, and judicial*, and continued the control of subsequent elections in themselves, by providing such discretionary power as effectually to keep the successive elections under the same influence, and thereby smother and defeat the popular will and thwart the action of a majority.

To prevent all political organized action, which in our form of government is indispensable to success, all opposition or constructive resistance was declared by its courts to be treason, and the most active leaders of the subjugated majority were imprisoned on such a charge, or driven from the Territory. Freedom of speech and the press was denied, under oppressive penalties, while peaceable assemblages of the people to petition the government for a redress of grievances were dispersed by the army of the republic at the point of the bayonet. Death or the felon's chain and ball was the penalty of free discussion on the only political question upon which there was a diversity of opinion among the people.

A usurpation thus conducted, and power thus obtained, it is unreasonable to suppose would be voluntarily relinquished by the usurpers. Nor is it reasonable to expect that under any remedy that might be provided the same spirit of injustice and wrong would not seize upon every opportunity afforded by legislative defects or omissions, to repeat the same process of usurpation in order to re-establish or perpetuate itself in the same ill-gotten power.

Large bodies of the men who have carried out this subjugation heretofore can with great ease, at any required moment, be thrown into the Territory and kept there under pretext of residence, difficult if not impossible of detection.

Such was the design in the original plan of subjugation, as developed in the evidence of one of the leading and prominent actors, Colonel John Scott, who held the office of city attorney of St. Joseph, Missouri. In his testimony before the Kansas committee, p. 932 of the report, he says: "It is my intention, and the intention of a great many other Missourians, now resident in Missouri, whenever the slavery issue is to be determined upon by the people of this Territory in the adoption of a State constitution, to remove to this Territory in time to acquire the right to become legal voters upon that question. The leading purpose of our intended removal to the Territory is to determine the domestic institutions of this Territory, when it comes to be a State, and we would not come but for that purpose, and would never think of coming here but for that purpose. I believe there are a great many in Missouri who are so situated."

Whenever the slavery issue is to be determined upon by the people of Kansas, in the adoption of the State constitution, new invasions, it seems, are to be made with sufficient numbers to consummate the original wrong.

Thus was the subjugation of this Territory and the compulsion of her domestic institutions resolved upon by a neighboring people with large resources and favorable opportunities for carrying out their purpose. In any measure of relief, therefore, that seeks a remedy for the wrongs of the people of this Territory through new elections, nothing but the most ample provision for the prevention of force and intimidation in every shape—of fraud and evasion of the law by voters—of fraud and complicity by the judges, as well as for the subsequent correction of all these things, should they occur in spite of the preventive measure—can hold out any hope of a fair and satisfactory result.

The Senate bill which has been referred to your committee is clearly insufficient to accomplish these ends. To any one at all familiar with the actual condition of the people of Kansas, it is evident that there is in that Territory, resulting from the circumstances briefly reviewed by your committee, an anomalous condition of things, so that the precautions ordinarily sufficient to secure a fair expression of the popular will would be entirely inadequate, and legislation deemed ordinarily sufficient would produce results very different from those to which we have been accustomed.

The time for holding the elections provided in the bill could, it is true, be changed by amendment, but only by abandoning the idea of holding the election on the same day as the Presidential election in the States, which was considered by the friends of the bill as one of its material and most valuable features. The time itself, it was urged, would be one of the great securities against invasion and fraud at the polls. By lapse of time the bill is stripped of this feature, which its friends regarded as so valuable. The bill recognizes a valid legislature for Kansas, and thus clothes five men with power to legislate for the Territory, by appointing all the judges of election and prescribing

the rules and regulations for conducting the same and making returns thereof, and gives them unlimited discretion in granting certificates of election. These five commissioners, for the time being, take the place of the legislature, which the friends of this bill claim was fairly elected, and is a valid legislature for the Territory. Yet the people are not to be entrusted with moulding their own institutions without the special superintendence of this administration and its appointees.

The guards and restraint against illegal and fraudulent conduct of election judges, instead of being provided in the bill, are placed at the discretion of the general administration, which has already endorsed and sustained the usurping government. The commissioners who were to appoint all the judges of election, prescribe the rules and regulations for conducting the same, are to be appointed by the President, and the rules and regulations for taking an enumeration of voters are to be prescribed by a member of his cabinet, and would, of course, be under his supervision.

In the judgment of your committee, there is little hope for the success of any measure of relief for the people of Kansas which is entrusted in its execution to an administration whose neglect of duty, or complicity with the wrong doers, has brought upon them all their woes.

No amendment of this bill would obviate this objection. For strike from it this feature and you will have destroyed the entire structure, and to make it of any efficiency, entirely different provisions would be necessary.

The enumeration of voters provided to be taken by this bill would, in all probability, be abused by the men who have been engaged in the past usurpation and subjugation, and thousands of names would fill the list of those who, like Colonel Scott, would be on the soil claiming to be residents, and who would have come for no other purpose but to make Kansas a slave State. How are the commissioners to exclude from their enumeration such men found by them on the soil at the time of taking the enumeration? Those five thousand men who invaded the Territory to usurp its legislative power could, with the same ease, secure a control of this election, for they have only to be in a position to secure their enrolment on the census, and all is accomplished. To ascertain that persons found in the Territory are not resident against their own declarations that they are, would involve the necessity of the contestants visiting the adjoining States to find unwilling witnesses, and when so ascertained, of sending process to compel their attendance, which, if possible to be done at all, could only be at the risk of life, and at a serious expenditure of time and money, to the exclusion of all other business for months. The extension of suffrage to persons outside of the Territory who claim to have been forced to leave on account of the troubles, and who shall return before a certain day, would be available for the five thousand invaders who voted at the election on the 30th of March, 1855, and might be taken advantage of by one party to make effectual a fraud, while, judging by past events, the other party would not be permitted to return.

The provisions to prevent force and violence to judges and voters is

to be exercised at the discretion of the President and his appointees, when the President has already witnessed one invasion and the exercise of violence, by which the will of a majority was subverted without any interference on his part to prevent, or measures to correct it. The penalties to punish such force or violence would be a dead letter in the statute book, while the courts of the usurpers are left in full vitality. The penalties for illegal voting would avail but little when the voter, as soon as he deposits his vote, returns to his home beyond the limits of the Territory. The constitution, formed under provisions of law so lax in their security of a free and fair exercise of the elective franchise, is not to be submitted to a vote of the people for ratification. A course unprecedented in the history of the country. No matter what enormities the constitution might contain, it is, when forced beyond the reach of the people, to be affected by it.

The bill relieves the people of none of their real grievances, but leaves the usurping legislature, and all its acts, except test oaths, in their original force. Not one of the many laws regulating, sanctioning and protecting slavery as an existing institution is changed, or in any way pretended to be; while it affords no ample security that all rights will not be again, as heretofore, trampled down at the ballot box.

Your committee cannot appreciate the necessity, propriety, or justice of requiring the people of the Territory to pass through the entire process of forming a State constitution, and incur all the risks of threatened fraud and violence and suppression of the popular will, which all admit is liable to occur, and to prevent which, confessedly, requires the most unusual and vigilant legislation, and the employment of the army of the United States for its enforcement, when that people have already adopted such a constitution and form of State government and submitted it to Congress.

In ordinary cases of the admission of a State, the only questions to be considered are the conformity of its organization to the requirements of the Constitution, the amount of its population, and the duration of its territorial pupilage. In tnis case, however, the urgent and overruling necessity of relieving the people from a state of subjugation revolting to all ideas of republicanism, and utterly inconsistent with, and subversive of, the principles of our institutions, should undoubtedly exercise a large influence, or even supersede objections of some weight in other cases, so far as those objections are to matters merely of discretion, and not relating to constitutional requirement.

In the report made by your committee on this subject at the last session, (and to which they beg leave to refer,) it was clearly shown that this proceeding was fully justified by past precedents, and had violated no constitutional provision. The territorial legislature has no power to confer or withhold the power of the people of a Territory to form a State government for presentation to Congress, with their application to be admitted as a State, and all acts of permission or prohibition of that territorial legislature are nugatory and void. This doctrine was settled in Jackson's administration in the case of Arkansas, (as shown in the report above referred to,) as well as in the debates of the Senate in the case of Michigan, and especially by the

constitutional doctrine then proclaimed by Mr. Buchanan and unanimously acquiesced in by the Senate. The position taken in these cases, that the power to form a State government for submission to Congress, including the provisional election of State officers, is derived from that clause of the Constitution which guaranties to the people the right to assemble and petition Congress for a redress of grievances; which involves, as a necessary consequence, the right to originate the movement by voluntary primary popular meetings.

It is sometimes alleged, however, that this application of the people is not to be tolerated if it originate in opposition or hostility to the territorial government. Your committee are unable to appreciate the point or meaning of this objection. Every application of the kind, in order to conform to the Constitution, must treat the territorial government as a grievance from which the application seeks relief, and must therefore be in opposition to it. If the meaning be that the territorial government is unfavorable to it, your committee have already shown that their assent or dissent is a matter of no moment whatever.

And even if this disfavor is so strongly manifested as to create a decided antagonism between the territorial government and the people, how can that in any way alter the rights of the parties? Or if the people, in the exercise of their constitutional privilege to complain against a "grievance," should complain in strong language inconsistent with some persons' ideas of good taste or propriety, it would be a singular mode of punishing them for an offence merely against good manners to deny them a right guarantied by the Constitution of the republic.

In the State constitution presented in this case there is nothing inconsistent with the federal Constitution, nor in opposition to the territorial government, except that, like all instruments of the kind, it necessarily supersedes such government. It contains no assault or encroachments upon the legitimate *rights* of such government. The most that can be said is, that it was adopted in bad temper towards the "grievance" to be redressed; and that temper might have been justifiable or unjustifiable, (an allegation which your committee deem it entirely unnecessary to inquire into, as it could in no way change rights;) or that some of the persons advocating the movement had committed offences against the territorial government laws, which your committee deem equally irrelevant and immaterial.

Having shown that there can be no real objection to granting the application on the ground of precedent or constitutional requirement, and the form of government being republican, it only remains to inquire whether it is justified by the amount of population, and is it desired by a majority of the people.

As to population, this point was fully considered and disposed of in the report of your committee at the last session, and they have nothing to add to the facts and arguments then adduced, except to state that all objections on this point seem to have been waived by both branches of Congress. The House passed an act for the admission of the State, and the Senate passed one for the immediate formation of a State government, in order to such admission, without respect to population,

and the bill referred to your committee is, therefore, as much liable to such an objection as is the substitute which they recommend.

The remaining point to be considered is, whether the majority of the people desire to be admitted as a State under the constitution presented. This your committee deem an important inquiry; for, however clear such a movement may be, the exercise of a constitutional right in strict conformity to constitutional requirements, and sanctioned by acknowledged and well established precedent, it is, nevertheless, a mere petition, and unless approved by a majority of those upon whom it is to operate the petition should not be granted. Whether it is so approved in this case is a fact which each member must determine for himself in the same manner as he would ascertain any other fact upon which it is necessary for him to form an opinion in order to guide his vote. This necessity is constantly imposed upon legislators, and it is an admitted principle that the absolute legal evidence which is required in judicial proceedings cannot be had, and is not expected or required. A rule that should require it would arrest all legislation. Books, letters, newspapers, public reports, declarations of individuals, and ordinary information of all kinds are daily received by legislators to establish facts on which they base their votes. Any information which is received as worthy of credit by a legislator, and which produces belief in the existence of a fact, is sufficient for his action. It is not necessary to cite the authority of any of the eminent statesmen who have announced this doctrine to sustain this position.

In view of the history of Kansas under the light of this doctrine, are not the facts sufficient to justify legislators in the belief that a majority of the people approve of the constitution as adopted and presented?

It is idle to attempt to disguise or conceal the fact, notorious to the whole country, that the great and only point of contest in the Territory between the two contending parties is, whether slavery shall be allowed or prohibited, and that the one party advocates this constitution because it prohibits it, and for the same reason the other party opposes it. To every man, then, who believes that the free State party is in a majority (no matter how that belief is induced) the petition is entitled to his support.

With the flood of information relative to Kansas that has for two years covered the whole country, and which has been sought with avidity by every person desirous of understanding its strange and eventful history, there are few, if any, men who have not formed, and even expressed, an opinion and belief as to which party is in the majority. The information and evidence upon this point is so extensive and voluminous, and so generally understood, that your committee deem it unnecessary to do more than refer to a small portion of it more immediately within their reach.

By reference to the report of the Kansas special committee at the last session, it will be seen that at the congressional election, in November, 1854, the pro-slavery party polled 2,258 votes, of which 1,729 were shown to have been illegal, although the investigation did not extend to all the districts, and the committee say that the settlers

took but little interest in the election, not half of them voting. In February and March, 1855, the census showed 2,905 voters, and on the 30th of March, 1855, the same party polled 5,427 votes, and the illegal votes were 4,908. At the election of October 1, 1855, they polled 2,721 votes, of which 857 were illegal, and a number of districts not investigated. In the first two of these elections the other party, as is well known, scarcely participated, and in the last not at all.

At the election of October 9, 1855, for congressional delegate, Governor Reeder received 2,849 votes, at a time when there was no occasion for illegal voting. The delegates who were elected to frame, and did frame, the free State constitution received 2,710 votes, none of which are shown to be illegal. The vote on the ratification of the constitution, December 15, 1855, was 1,778, of which only 46 were opposed, and the election was held directly after the first invasion to destroy Lawrence, and for that reason a full vote could not be polled.

The election at Leavenworth was interrupted by violence of the opposing party, and the poll books and ballot box destroyed, where the free State vote for delegates had been 514. So that the vote on ratifying this constitution was in reality some 2,300, notwithstanding the disturbed state of the Territory, and influences of intimidation that prevailed at that time, calculated to deter free State voters from voting.

This brief review of the elections held clearly indicates that the party advocating the free State constitution are in the majority in the Territory.

But the ever-recurring invasions from the State of Missouri at all the elections of the Territory, in numbers amounting from 1,700 to 5,000, to assist the pro-slavery party, and elect their candidates; the complicity of that party in the Territory with these invasions; the willing acceptance of this aid, and the laws passed by them when in power to exclude the free State voters from the polls, as well as the violence used by the Missourians and the pro-slavery men of the Territory to break up the election under the State constitution, and thus prevent an ascertainment of the numerical strength of the former, furnishes the clearest evidence in the nature of their own admissions of the superior numbers of their opponents.

It is not to be credited that these measures of fraud and violence so often repeated were unnecessary to carry the election.

The advocates of the Senate bill referred to your committee indicate, by their support of that bill, the opinion that the formation of a State government is the proper remedy to redress the great wrong that has been perpetrated upon the people of Kansas, and to restore to them their rights. This was the opinion of your committee in their report at the last session, and subsequent events have in no way changed or weakened it.

As there seems to be no material difference on this point between the friends of the Senate bill and those who advocate the substitute now recommended, your committee omit the arguments which might be adduced to establish the proposition, and refer only to the point on which difference of opinion exists. And that is whether the state government already formed shall be sanctioned and adopted, or shall the

people be required, under the present difficulties, to pass the ordeal of a similar proceeding again? Upon this point your committee think there is no sufficient reason for the latter course. The constitution already adopted, as has been fully shown, is in strict and undoubted conformity to constitutional requirements, is justified by numerous and authoritative precedents—is sustained by a population, agreed by the advocates of both measures to be sufficient, and which is expected by all to increase with great rapidity, and is approved by a majority of the people. What solid objection, then, can be urged against its adoption? That persons who are displeased with the prohibition of slavery which it contains, your committee can readily conceive, might prefer another trial of the question in the hope of a different result. But that will hardly be received as a reason why this government should withhold from any portion of the people their constitutional rights, and neglect to redress their wrongs.

Your committee therefore recommend, in lieu of the Senate bill authorizing the formation of a State government by the people of Kansas, a bill for the admission of Kansas as a State under the Topeka constitution.

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